

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

September 10, 1949

Mr. John P. Clark
City Attorney
Winslow, Arizona

Dear Mr. Clark:

We have your letter of August 3, 1949 wherein you ask us the following question:

"Would your office be so kind as to furnish me with an opinion whether or not municipal corporations created under Article 6, 16-601, et seq. have the power to provide for absentee voting in City General and Special Elections?"

Chapter 16, Article 9 ACA 1939, provides for the registration of voters and elections (general and special) in cities and towns. Section 16-904 ACA 1939 reads as follows:

ARS 9-821

"Election--General laws applicable.--
The manner of conducting and voting at elections of any such city or town, of keeping the poll lists, counting and canvassing the votes, certifying the returns, declaring the results and notifying the persons elected, contesting the election, and all acts relating to such election, shall conform to the provisions of the laws relating to the general election of county officers as nearly as may be except that the returns shall be made to the clerk of such city or town, and the legislative body of such city or town shall canvass the returns, declare the result and issue the certificates of the election."
(Emphasis supplied)

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The Constitution of Arizona (Article 7, Section 11) treats the general election of county officers in this manner:

"(Date of general elections.)--
There shall be a general election of representatives in congress, and of state, county, and precinct officers on the first Tuesday after the first Monday in November of the first even numbered year after the year in which Arizona is admitted to statehood and biennially thereafter."

Article 7, Section 12 of the Constitution of Arizona provides:

"(Registration laws.)--There shall be enacted registration and other laws to secure the purity of elections and guard against abuses of the elective franchise."

And, by virtue of Article 12, Section 3, Constitution of Arizona, county officers are to be elected by the qualified electors of each county.

Sections 17-301 and 17-303 ACA 1939 provide for *ARS 11-211*
the election of members of county boards of supervisors at *11-213*
the general election for state and county officers. Section 17-505 ACA 1939 reads in part:

"County and precinct officers, for whose election and term of office no other provision is made shall be elected at the general election, and shall hold office for the term of two (2) years from the first day of January next after their election. * * * "

Pursuant to the constitutional mandate the Legislature has enacted comprehensive legislation governing elections. See Chapter 55, ACA 1939, as amended. These many provisions among other things concern the qualifications and registration of voters, the time and manner of holding an election, the conduct of elections and the canvassing of the returns. This statutory material is equally applicable to the election of state, county and precinct officers.

It follows that the language of Section 16-904, supra, that the manner of conducting and voting at elections of cities and towns "shall conform to the provisions of the laws relating to the general election of county officers as nearly as may be" refers to those statutory provisions governing elections in general, contained in said Chapter 55.

Among these provisions are those providing for absentee voting. See Sections 55-1301 through 55-1310 ACA 1939. Section 55-1301, supra, reads:

ARS 16-1101
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16-1107

ARS 16-1101
"Electors absent from county or physically disabled may vote.--
A qualified and registered elector who is absent from the county of which he is an elector, or who expects to be absent from such county, at the time of holding any general or primary election, or who furnishes the county recorder with a doctor's certificate of physical inability to go to the polls, may vote at such election as hereinafter provided."

The succeeding sections detail the procedure to be followed in carrying out our absentee voters' law. Nowhere within these sections is there language to the effect that the rules governing absentee voting are equally applicable to municipal elections.

It is, however, our opinion that as Section 16-904, supra, does give to cities and towns the authority to prescribe the manner of conducting and voting at municipal elections and does provide that such elections in all respects "shall conform to the provisions of the laws relating to the general election of county officers as nearly as may be" (among which provisions are those authorizing and regulating absentee voting), such cities and towns are impliedly empowered to enact ordinances to provide for absentee voting in their general and special elections. We find no constitutional prohibition against such municipal action. Any such ordinances should be in conformity in so far as possible with Section 55-1301, et seq., supra. AR 9-821
16-1101

Authority from other jurisdictions is of little aid and cannot be accorded great weight as the matter is peculiarly one governed by local constitutional and statutory provisions. As is said in 18 Am. Jur., Elections, Section 214, "The scope, application, and effect of absentee voter laws depends, of course, upon the proper construction of the statutes". Also see 29 C.J.S. Elections, Section 210. We have, however, found cases from several jurisdictions wherein the particular constitutional and statutory provisions concerned were interpreted so as to make the general absentee voting statute applicable to municipal elections. See:

Wood v. State ex rel. Lee, 133 Tex.
110, 126 S.W. 2d 4, 121 ALR 931

Phillips v. Slaughter, 209 N.C. 543,
183 S.E. 897

McRobbie v. Registrars of Ipswich,
322 Mass. 530, 78 N.E. 2d 498

In the Wood case the court considered the application of the absentee voting statute to municipalities and hold that such a statute although making no direct mention of absentee voting in cities, when construed in connection with other election statutes making the provisions generally regulating the holding of elections applicable to cities and expressly authorizing cities to use voting machines in voting absentee ballots, provided for absentee

voting in municipal elections. In the course of its opinion the court made this remark, which seems particularly appropriate here:

" * * * we think further that in permitting absentee voting in city elections the provisions of our general statutes on the subject should be followed as near as practicable * * * "

Nor are we unmindful of the rule that absentee voting statutes are to be strictly construed as they confer a privilege and not an absolute right. See:

29 C.J. S., Elections, supra

McMaster v. Wilkinson (Nebr.) 15
N.W. 2d 348

Brown v. Dakota Public Service Co.,
(S.D.) 299 N.W. 569

It is to be noted that Section 55-220 ACA 1939, one of the sections concerning the qualifications of and registration of electors provides in part:

ARS
16-112

"Provisions of act applicable to incorporated cities and towns.--
The provisions of this act, except as to the registration of absent electors (§ 55-203 ACA 1939) are hereby made applicable to cities and towns incorporated under the provisions of articles 1 and 2, chapter 12, Revised Code of 1928 (ss 16-101--16-116, 16-201--16-231), and except as to the registration of such absent electors the duties imposed upon the county recorder of each county are hereby imposed upon the city or town clerk of every such incorporated city or town. * * * "
(First bracketed material supplied)

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And, in regard to special elections, Section 55-222 ACA
1939 reads:

"Duties of public officers.--All
powers and duties conferred or
imposed by law upon any public
officer with respect to regular
elections are hereby conferred
and imposed with respect to any
such special election."

AR-5
16-776

Reiterating our conclusion, it is our opinion
that municipal corporations created under Section 16-601,
et seq., ACA 1939 have the power to provide for absentee
voting for cities in general and special elections, such
absentee voting to conform as nearly as may be to the
procedure set forth in Sections 55-301, et seq., supra.

We trust this is sufficient answer to your ques-
tion.

Very truly yours,

FRED O. WILSON
Attorney General

RICHARD C. BRINEY
Assistant Attorney General

RCB:lh

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